

**REMARKS**

The requirement for election is respectfully traversed on the ground that the various species referred to in the Office Action are simply different embodiments of the same invention. Applicants have presented a generic invention with generic claim 1 and set forth a number of embodiments falling within the generic invention. It is submitted that 37 CFR 1.141 points out that distinct inventions may not form a single general inventive concept and may not be claimed in one application. However, the rule states that more than one species of an invention may be specifically claimed in different claims in one application, provided the application also includes an allowable generic claim and all the claims to species in excess of one are written in dependent form or otherwise include all the limitations of the generic claim. It is submitted that the rule precisely describes the situation in this application. Therefore, the requirement for election is improper.

The Examiner will note 37 CFR 1.141(b) which sets forth the particular kinds of claims in different categories which may be included in the same application. These types of claims include a product in combination with a process for manufacture of the product, and a claim for use of the product. Also, claims to one apparatus and a process to be practiced on that apparatus may be contained in the same application. For these reasons, the claim structure in this application, as described below, is believed proper and in accordance with the rules, and not subject to a requirement for election. Further, if a generic claim is finally held allowable in the case, then all species falling within that generic claim must be allowable in accordance with 37 CFR 1.146.

Claims 1-11 recite a video light producing device. Figure A, attached herewith, illustrates a concept common to these claims and common to Figs. 1, 2, 3(a), 3(b), 4(a) and 4(b)

of the present application. Figure A specifically illustrates an example of subject matter recited in claims 1 and 6. The video light producing device in Figure A comprises a first optical block creating two light supplying portions, a second optical block for crossing two light fluxes and guiding the light fluxes to a display panel, a single optical element for refracting light (see claim 6), a color separating and mixing element, and a display panel.

Claim 2 pertains to both the first optical block and the second optical block, which are exemplarily shown in Figs. 2 and 3(a). Claim 3 relates to both the first optical block and the second optical block, which are exemplarily shown in Figs. 3(b) and 4(b). Claim 4 recites the first optical block, an example of which is shown in Fig. 4(a). Claim 5 also recites the first optical block, an example of which is shown in Fig. 4(a). Claim 7 pertains to the second optical block, which is exemplarily shown in Fig. 2. Claim 8 relates to the second optical block, and its example is shown in Fig. 2. Claim 9 recites the second optical block, examples of which are shown in Figs. 4(a) and 4(b). Claim 10 pertains to a first irradiation area and a second irradiation area of claim 1, which are exemplarily shown in Fig. 1. Exemplary examples of subject matter recited in claims 11 and 12 are shown in Fig. 2. It is noted that claim 12 recites a projection type vide display including a video light producing device in any one of claims 1-11. Figure B, attached, illustrate the claim structure.

The Examiner's position set forth in the Action that Applicants' traversal of this requirement for election on the ground that different embodiments of the same invention are presented may be considered an admission in a subsequent prior art rejection on the ground that one species is obvious in view of the other, is believed improper and contrary to the law. It is believed clear that Applicants' teaching of equivalency in Applicants' own specification is not available to the Examiner as an admission in a rejection under 35 U.S.C. §103. The equivalence

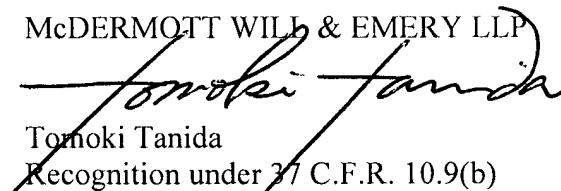
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must be disclosed in the prior art. Any disclosure of equivalence in Applicants' specification cannot be used by the Examiner to support his rejection. See *In re Ruff*, 256 F.2d 590, 118 USPQ 340 (CCPA 1958). Therefore, this portion of the Action represents an improper use of Applicants' disclosure and Applicants' traversal of this election requirement cannot be used against them in future prosecution of this application.

To the extent necessary, a petition for an extension of time under 37 C.F.R. 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

McDERMOTT WILL & EMERY LLP

A handwritten signature in black ink, appearing to read "Tomoki Tanida", is written over the printed name and firm name.

Tomoki Tanida

Recognition under 37 C.F.R. 10.9(b)

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